IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2112 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?Yes

2 To be referred to the Reporter or not ?Yes

3 Whether their Lordships wish to see the fair copy of the judgment ?No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?No

5 Whether it is to be circulated to the civil judge ?No

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RASHMIKANT GOPALDAS SHAH & 1 - Appellant(s)
Versus
UMASHANKER JAGANNATHPRASAD DUBEY & 2 - Defendant(s)

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Appearance :

MR ASHUTOSH R BHATT for Appellant(s) : 1 - 2.
UNSERVED-EXPIRED (N) for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,
MS MEGHA JANI for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 05/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.M.MEHTA)

1. The parents of Mitesh, who died in a motor vehicle accident at the age of 30 years have filed this appeal under Section 173 of the Motor Vehicles Act, against the judgment and award dated 6.8.2002 passed by the M.A.C.T.(Auxi.), Panchmahals at Godhra in M.A.C.Petition No.801 of 1996 for enhancement of the compensation amount of only Rs.1,34,500/- awarded by the Tribunal with interest at the rate of 9% per annum from the date of the application till the deposit with proportionate costs thereon.

2. The facts giving rise to this appeal are as under:-

2.1 On 1.6.1996 Mitesh Rashmikant (the deceased) was driving Jeep bearing Registration No.GJA-8934 from Dahod to Pawagadh. At that time respondent No.1 herein driving the Truck bearing Registration No.CII-8043 came from opposite side in a rash and negligent manner. The Truck dashed with the Jeep and the deceased sustained injuries on the chest and other parts of the body. He was admitted in the hospital and thereafter shifted from Vadodara

and during journey of Vadodara to Dahod, he succumbed to the injuries on the same day.

2.2 The parents of the deceased filed Claim Petition No.801 of 1996 before the Tribunal on 25th July, 1996. In the original claim petition, the claimants claimed Rs.2.00 lakhs as compensation. Thereafter the applicants filed an amendment application on 25th September 2000 and stated that as regards the income of their son, though the salary was originally stated to be Rs.2,200/- p.m. but overall his income was about Rs.3,500/- to Rs.4,000/- and the original claim petition was accordingly sought to be amended and compensation of Rs.4,90,000/- was claimed.. The said application was granted by the Tribunal on 26th September 2000.

2.3 On behalf of the driver, owner and insurance company, though they were served by Registered Post A.D., but nobody appeared before the Tribunal. They did not file any written statement in this behalf. Subsequently also notice was issued but insurance company did not appear.

2.4 At the trial, the father of the deceased was examined at Exh.20 in which it was categorically stated that his son was driving the jeep and he was earning Rs.3,500/- to Rs.4,000/- per month. His wife had deserted him earlier and, therefore, the claim was made only by the father and the mother. He also stated that regarding the accident, the panchnama and other documentary evidence was produced by him. The parents had no income at that time also. Even at the time of evidence the Court gave an opportunity for cross-examination by the opponents including the Insurance Company. However, the insurance company did not remain present and the father of the deceased was not cross-examined by the insurance company. The evidence was led somewhere in April 2002. The applicants had also filed application for production of the documents particularly the chargesheet filed before the trial court also and the copy of insurance policy. From the record it appears that the insurance cover for the truck was from 20.3.96 to 19.3.97 and the incident had taken place on 1.6.96, so the vehicle was covered by the said policy on the

date of the accident.

2.5 After going through the documentary evidence produced by the claimants, the Tribunal has made an award of Rs.1,34,500/- in favour of the claimants jointly and severally with interest at the rate of 9% p.a. from the date of application till the deposit with proportionate costs thereon.

2.6 Being aggrieved and dissatisfied with the aforesaid judgment/award, the original claimants filed this appeal before this Court in October 2002. The appeal was admitted and looking to the age of the parents the matter was fixed for early hearing.

3. Mr.Ashutosh R.Bhatt, learned advocate for the appellants has contended that, at the relevant time of the accident, original claim petition as amended to state that the deceased was earning Rs.3,500/- to Rs.4,000/- per month and he was likely to earn more in future, the father of deceased also deposed before tribunal in support of the said case and the Insurance Company neither filed reply to the claim

petition nor cross-examined the father of the deceased and, therefore, the contention that income of deceased was Rs.3,500/- to Rs.4,000/- per month has gone unchallenged. As the insurance company has not filed written statement nor cross-examined the claimant, the Court should accept the claimants case.

3.1 The learned advocate has therefore submitted that, in view of the evidence on record, the Tribunal ought to have taken income of the deceased at the relevant time at Rs.4,000/- per month. He submitted that as the Tribunal has clearly erred in assessing the income of the deceased at Rs.1,500/- per month and the same is contrary to and inconsistent with the record of the case.

4. On the other hand, Ms.Megha Jani, learned advocate who appeared on behalf of the Insurance Company, has sought to support the judgment of the Tribunal.

5. We have considered the facts and circumstances of the case. In our view as the insurance company

neither filed written statement nor led any evidence before the trial court and even did not cross-examine the applicant, so entire version of the applicant has remained unchallenged.

5.1 In view of the facts and circumstances of the case particularly the fact that the deceased was a jeep driver, we are of the view that the income of the deceased is required to be taken at Rs.3,500/- per month.

6. As regards future income, we have considered the judgments of the Hon'ble Apex Court in the case of General Manager, Kerala State Road Transport Corporation Vs. Susamma Thomas and others reported in (1994) 2 SCC 176. In para 5 on page 181 the Hon'ble Supreme Court has observed as under:

> "The determination of the quantum must answer what contemporary society "would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing". The amount awarded must not be

niggardly since the “law values life and limb in a free society in generous scales”. All this means that the sum awarded must be fair and reasonable by accepted legal standards.”

6.1 In para 19 on page 186 & 187 the Hon'ble Supreme Court has further observed:

“In the present case the deceased was 39 years of age. His income was Rs.1032 per month. Of course, the future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. While the chance of the multiplier is determined by two factors, namely, the rate of interest appropriate to a stable economy and the age of the deceased or of the claimant whichever is higher, the ascertainment of the multiplicand is a more difficult exercise. Indeed, many factors have to be put into the scales to evaluate the contingencies of the future. All contingencies of the future need not necessarily be baneful. The deceased person in this case had a more or less stable job. It will not be inappropriate

to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs.1032 per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs.2000 as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and the dependents."

(emphasis supplied)

7. Similar principle has been followed in following decisions of the Hon'ble Apex Court.

(i) Sarla Dixit Vs. Balwant Yadav reported in 1996 ACJ 381, particularly para 6 on page 584, 587.

(ii) New India Insurance Co.Ltd. Vs.Kala Devi reported in 1996 ACJ 17.

8. As regards multiplier, we are relying upon the judgment of Hon'ble Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas and others reported in (1994) 2 SCC 176 and also another judgment of Hon'ble Apex Court in the case of U.P.State Road Transport Corporation and others Vs. Trilok Chandra and others reported in 1996 (3) GLR 136 particularly para 18 on page 142 and also judgment of Hon'ble Apex Court in the case of Manju Devi and another Vs. Musafir Paswan and another reported in 2005 ACJ 99.

9. As far as this Court is concerned, we may refer to Division Bench judgments of this Court in Smt.Rafia Sultan Widow of Mirza Sultan Ali Baig and others Vs. Oil and Natural Gas Commission, reported

in 1985(2) GLR 1315 (relevant para 28 on page 1334 and 1335), Gujarat State Road Transport Corporation Vs. Kamlaben Valjibhai Vora reported in 2001(3) GLR 2528, (particularly para 45 on page 2553, para 46 on page 2557 and para 47 on page 2557) and also another judgment of the Division Bench of this Court in the case of Nasimbanu Wd/o. Sirajuddin Amruddin Kazi and others Vs. Ramjibhai Bachubhai Ahir and others reported in 2005(2) GLR 1476 (particularly para 6) and also recent judgment of a Division Bench of this Court in First Appeal No.287 of 1988 First Appeal No.287 of 1988 in the case of Ushaben Wd/o. Jashubhai Rana and others Vs. General Manager, ONGC and others decided on 23.12.2005 (Coram: R.S.Garg & K.M.Mehta, JJ.)

10. In view of the aforesaid decisions of the Hon'ble Apex Court and also the judgments of the Division Benches of this Court, we are of the view that once we take the income of the deceased at Rs.3,500/- per month then the future salary will be (Rs.3,500/- + Rs.7,000/- = Rs.10,500 / 1/2 = Rs.5,250). In the present case, the applicants are

parents and therefore Ms.Jani for the Insurance Company wants us to make 2/3rd deduction i.e. Rs.3,500/-. However, we find that the deceased aged 34 years was already deserted by his wife before the accident and, therefore, the deceased would have spent at least one half amount on the parents. Hence, the dependency benefit will be Rs.2,625/- (1/2 of Rs.5250/-) i.e. Rs.31,500/- per annum.

11. As regards multiplier, in the present case on the date of the accident, as per record of the case, the age of deceased was 30 to 35 years old, the age of the father was 60 years and age of mother was 55 years at the time of incident. Mr.Bhatt has stated that if we go by schedule we have to take multiplier of 17 depending on the age of the deceased. In view of the age of the parents, we have to take the multiplier of 11 or 8 depending upon the age of mother and father. We have considered rival submissions in this behalf. Looking to the age of the mother, we adopt the multiplier of 11 years. So the dependency benefit will be Rs.3,46,500/- (Rupees Three Lacs Forty Six Thousand Five Hundred only).

12. Over and above the Tribunal has awarded transportation charges as Rs.1,500/-. However, looking to the facts and circumstances of the case, we award Rs.6,000/- for transportation charges. As regards the conventional amount for expectation of life is concerned, the Tribunal has awarded Rs.10,000/-. However in Bhanubhen P.Joshi Vs. Kantilal B.Parmar, 1993 (1) GLH 260, this Court has revised this amount to Rs.20,000. Hence we award Rs.20,000/- as compensation for loss to the estate. As regards funeral expenses, the Tribunal has awarded Rs.3,000/-, we maintain the same.

13. The amounts payable to the claimants under various heads can now be tabulated as under:-

(i)	Loss of dependency benefit	Rs.3,46,500/-
(ii)	For Transportation Charges	Rs. 6,000/-
(iii)	For Funeral Charges	Rs. 3,000/-
(iv)	For loss to the estate	Rs. 20,000/-
	Total	Rs.3,75,500/-

14. In view of the above discussion, the Insurance Company is directed to pay the additional amount of Rs.2,41,000/- (Rs.3,75,500/- minus Rs.1,34,500/- already awarded by the Tribunal) along with interest at the rate of 9% per annum from the date of claim petition till realisation to the claimants in this behalf. The additional amount with interest shall be deposited by the respondent Insurance Company within two months from the date of receipt of this judgment. Upon deposit of the amount, the Tribunal shall invest 85% (eighty five) of the amount since the age of the father is about 70 years and the age of mother is 65 years as of today in more than one fixed deposits with a Nationalised Bank near the residence of the claimants subject to the usual conditions about prohibition against premature encashment of/encumbrance over the deposits, and permission to the claimants to withdraw periodical interest accruing on fixed deposits and a direction to the bank not to permit the bank account of the claimants to be operated by a person who is not a close relative of the claimants

and the balance amount shall be disbursed to the claimants by account payee cheque. In case in future some medical or other emergency arises then it will be open for the claimants to file an application for disbursement of further amount/s.

15. The appeal is partly allowed in the aforesaid terms.

(M.S. SHAH, J.)

(K.M. MEHTA, J.)

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